BAIL SLIP

That the Petitioner 1&2/Appellants 1&2 viz periyadurai(A1) and Angan Alias Anbu(A2) were directed to be released on bail in and by the order of this court dated 23.3.2000 in Crl.MP.620 of 2000.

That the petitioner 1 to 5/Appellants 3 to 7 Thangaraj(A3), Sekar(A4), Elumalai(A5), Devendran(A6), Gobi(A7) were directed to be released on bail by order of this court dated 20.12.1999 and made in crl.M.P.1044 of 1999.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 8-8-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.986 of 1999

1.Periyadurai
2.Angan @ Anbu
3.Thangaraj
4.Sekar
5.Elumalai
6.Devendran
7.Gobi .. Appellants

vs

State by:
Inspector of Police
Pallipattu Police Station
Kancheepuram District
(Crime No.966/95) .. Respondent

Criminal appeal filed under Sec.374 of the Code of Criminal Procedure against the judgment of the Additional District and Sessions Judge, Chengalpattu, made in S.C.No.350 of 1998 dated 18.11.1999.

For Appellants : Mr.T.Sudanthiram
For Respondent : Mr.V.M.R.Rajendran
Additional Public
Prosecutor

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JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The appellants seven in number, have brought forth this appeal from the judgment of the Additional Sessions Division, Chengalpattu, aggrieved over the finding of the said Court that they were guilty of the offences as stated below.

Accused	Guilty	Punishment
A-1 and A-2	147, 302 & 323 read with 149 I.P.C.(4 counts)	Life imprisonment under Sec.302 I.P.C. and 6 months R.I. under Ss 147 & 323 read with 149 I.P.C.
A-3 to A-5	147 & 302 read with 149 I.P.C., 323 (3 counts) & 323 read with 149 I.P.C. (3 counts)	Life imprisonment under Sec.302 read with 149 I.P.C. and 6 months R.I. under Ss 147, 323 & 323 read with 149 I.P.C.
A-6 and A-7	147, 302 read with 149 I.P.C., 323 (2 counts) and 323 read with 149 I.P.C. (2 counts)	Life imprisonment under Sec.302 read with 149 I.P.C. and 6 months R.I. under Ss 147, 323, & 323 read with 149 I.P.C.

2. The short facts necessary for the disposal of this appeal could be stated thus:

(a) P.W.1 is a native of Sambandavada Colony. He was employed in a coconut thope of Vijayasekara Reddy. On 16.12.1995 at about 5.30 P.M., he went to the thope, where he was taking bath. At that time, one Ammavasai who came there, asked him to divert the water course. Accordingly, he did. On seeing this, the accused and one Ammavasai, since deceased, questioned him "how he could do so". There was a quarrel between the parties. Then, P.W.1 came back. Sometime later, all the accused armed with sticks came to the house of P.W.1. The accused Ammavasai, since deceased, attacked P.W.1 on his back and cheeks with sticks. When P.W.2, his wife, and P.W.3, the wife of one Venkatesan, since deceased, intervened, the accused attacked them with sticks. The junior paternal uncle of P.W.1 one Venkatesan, who was living in the next house, came out and intervened in order to pacify them. At that time, A-1 and A-2 attacked him with sticks and stones, in that P.Ws.1 to 3 were injured, and the deceased died due to the injuries sustained by him. On 16.12.1995, P.W.12 the Head Constable, attached to Pallipattu Police Station, recorded the statement given by P.W.1. Ex.P1 is

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the statement given by P.W.1. On the strength of Ex.P1, P.W.12 registered a case in Crime No.966/95 under Sections 147, 148, 324, 323 and 302 of I.P.C. The printed First Information Report Ex.P13 was despatched to the Court.

(b) The case was taken up for investigation by P.W.13 the Inspector of Police, who proceeded to the spot, made an inspection in the presence of the witnesses and prepared an observation mahazar Ex.P2, and a rough sketch Ex.P14. M.Os.1 to 4 the sticks, and M.Os.5 to 8 pieces of bricks, were recovered under a cover of mahazar. He conducted the inquest on the dead body of Venkatesan in the presence of panchayatdars and witnesses and prepared Ex.P15 the inquest report.

(c) On 17.12.1995, P.W.10 the Doctor, medically examined P.W.1 and he has narrated the following injuries sustained by P.W.1 in Ex.P7 the accident register copy.

"1. An abrasion of 5 cm x 1 cm over centre of back.
2. An abrasion of 1 cm x 2 cm over left thigh.
3. A contusion of 2 cm x 3 cm over left temporal region."

(d) Likewise, the Doctor examined P.W.4, and the corresponding accident register copy is marked as Ex.P8 wherein the following injuries were noted by the Doctor.

"1. A contusion of 2 C.M. x 2 C.M. over centre of chest.
2. A contusion of 2 C.M. x 2 C.M. over centre of back.
3. A contusion of 2 C.M. x 2 C.M. over centre of right thigh."

(e) P.W.10 examined P.W.3, and the following injuries sustained by her were mentioned in Ex.P9 a copy of accident register.

"1. A blunt injury of 2 cms x ½ cm x ½ cm over centre of head.
2. A contusion of 2 cms x 2 cms over right upper arm.
3. A contusion of 1 cm x 1 cm over right wrist."

(f) The Doctor then examined P.W.2, and he noted the following injuries found on her, in Ex.P10 a copy of accident register.

"1. A contusion of 2 cm x 2 cm over centre of chest.
2. A contusion of 2 cm x 2 cm over right upper arm.
3. An abrasion of 1 cm x ½ cm over back of neck.
4. A contusion of 2 cm x 2 cm over left side of neck."

(g) Pursuant to a requisition given by P.W.13 through P.W.11 a Police Constable, P.W.10 the Senior Assistant Surgeon, attached to the Government Hospital, Tiruthani, conducted autopsy on the

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dead body of Venkatesan and found the following injuries on his person.

> "1) Two abrasion ½ x ½ cm over scrotum one on each side.
> 2) Two abrasion ½ cm x ½ cm over parineal region just below scrotum on each side."

The Doctor has issued Ex.P12 the postmortem certificate, and has opined that the deceased would appear to have died due to injuries over scrotum, peritoneal, testes and due to the shock and haemorrhage about 18 to 27 hours prior to postmortem.

(h) During the course of investigation, on 18.12.1995, the Investigating Officer arrested A-2, A-3, A-4 and A-5, and they were all remanded to custody. On 15.7.1996, P.W.14 the Inspector of Police, took up further investigation in the case. During investigation, he arrested A-6 on 1.9.1996 and produced before the Court for remand. On completion of investigation, he filed the final report.

3. Pending investigation one Ammavasai shown as accused in the case, died, and the case was committed to Court of Session against the appellants 1 to 7. On committal, necessary charges were framed against them.

4. In order to substantiate the charges levelled against the appellants/accused, the prosecution examined 14 witnesses and relied on 15 exhibits and 15 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They flatly denied them as false. No defence witnesses were examined. The arguments advanced by both sides were heard, and the trial Court found the appellants/accused guilty and awarded the punishments referred to above. Aggrieved, the appellants have brought forth this appeal.

5. The learned Counsel Mr.T.Sudanthiram, inter alia made the following submissions.

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(i) From the evidence, it would be very clear that there was no enmity between the parties, and apart from that, the medical evidence would clearly indicate that the deceased was aged 85 years old, and there were only minor abrasions found on his person.

(ii) It is pertinent to point out that the prosecution has examined P.Ws.1 to 4 as injured persons. They had gone to the hospital only on the next day namely 17.12.1995. At this juncture, it has become necessary to point out that all the memos issued by the police, have been deliberately suppressed. Had it been brought to the notice of the Court, it would falsify the prosecution story.

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(iii) Apart from that, according to P.W.1, A-1 and A-2 attacked the deceased on his scrotum; but according to P.W.2, apart from A-1 and A-2, another accused by name Ammavasai, also attacked the deceased on the scrotum. Thus, with regard to the persons who attacked the deceased on the scrotum, the prosecution evidence is not certain.

6. Added further, the learned Counsel that the injuries found on the deceased, who was aged 85 years, were only abrasions, and there was no corresponding internal injury; that further, the Doctor has opined that there is only possibility of death due to injuries; but, he has not opined that these injuries are sufficient to cause death and are necessarily fatal; that the Doctor has admitted in the cross-examination that the injuries were possible by a fall, and further he has admitted that the deceased being 85 years old, should have the blood-pressure and heart disease; that even assuming that the prosecution has proved the facts as put forth, the act of the accused would not fall within the ambit of murder; that In the instant case, admittedly, there was no enmity between the parties; that there was a quarrel between P.Ws.1 to 3 and the accused for half an hour; that at that time, the deceased had interfered, and pursuant to the quarrel, the occurrence had taken place, and under the circumstances, it would not fall within the ambit of murder; that If at all, the act of the accused is proved, it would come only under 325 of I.P.C., and it has got to be considered by this Court.

7. This Court heard the learned Additional Public Prosecutor on the above contentions.

8. It is not in controversy that Venkatesan died out of homicidal violence. It is also not in dispute that he was 85 years old at the time of occurrence, and he died instantaneously at the spot. After the inquest was conducted by the Investigating Officer, the dead body of Venkatesan was subjected to postmortem by the Doctor P.W.10, and a certificate has also been issued by him, wherein he has opined that the deceased would have died due to the injuries over scrotum, peritoneal, testes and due to shock and haemorrhage. Thus, there can be no difficulty in holding that Venkatesan died on account of homicidal violence.

9. In order to substantiate that the deceased Venkatesan died due to the act of the accused, the prosecution has examined P.Ws.1 to 4. It is true that they are close relations, and on that ground alone, their evidence, needless to say, cannot be rejected; but, it should be subjected to scrutiny. In the instant case, P.Ws.1 to 4 are all injured witnesses. They have also been medically examined by P.W.10 the Doctor, and the copies of the accident register in respect of the injuries sustained by them have been brought forth. The statements of the injured witnesses have also been recorded by the Doctor, to whom they have clearly stated about the place of occurrence and number of

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persons who have participated in the crime. Apart from that, in the instant case, the medical evidence is in full support of the prosecution case not only in respect of the deceased, but also in respect of P.Ws.1 to 4, who were injured at the time of the occurrence.

10. The contentions put forth by the learned Counsel for the appellants, were anxiously considered by the Court; but, the Court is unable to see any merit in those contentions. It is pertinent to point out that P.Ws.1 to 4 have categorically spoken to the fact that it was A-1 and A-2 who attacked the deceased with sticks and stones respectively, and the corresponding injuries have also been found on his person. That apart, it is true that there are two abrasions on his person. But, in the instant case, those abrasions were the reasons for his death at that particular point of time, since the deceased was 85 years old. Thus, from the available evidence, it can be well stated that it was the act of the appellants/accused which caused the instantaneous death of the old man. In that regard, the evidence of P.Ws.1 to 4 are cogent and trustworthy. It remains to be stated that though the injuries were simple, sufficient medical evidence to corroborate their ocular testimony are also produced by the prosecution, and hence, it could be found that it was the act of A-1 and A-2, which led to the death of the deceased as a direct consequence. So far as the other appellants/accused are concerned, from the evidence it could be seen that P.Ws.1 to 4 have sustained simple injuries.

11. Coming to the question of the act of the appellants/accused, there is sufficient evidence to show that prior to the occurrence, a quarrel arose between the parties, and in that quarrel, A-1 and A-2 have attacked the deceased. The contention put forth by the learned Counsel for the appellants that the act of the accused would fall within the provisions of Sec.325 I.P.C. cannot be countenanced. Though the said argument is attractive at the first sight, it would not stand the scrutiny of law. In the instant case, admittedly, the age of the deceased at that time was 85 years, and A-1 and A-2 have attacked him with sticks and stones respectively, and corresponding injuries have also been found on him, and he died instantaneously. Taking into consideration the age of the deceased and the fact that it should be well within the knowledge of A-1 and A-2 that their act would likely to cause death, and they have done the act also, this Court is of the view that the act of A-1 and A-2 would not fall within the ambit of murder, but would fall under Sec.304 (Part II) read with 34 of I.P.C., and awarding a punishment of 5 years Rigorous Imprisonment would meet the ends of justice, and in that, there was no common object on the part of the appellants 3 to 7.

12. As regards the other appellants 3 to 7, as stated earlier, they have caused simple injuries to P.Ws.1 to 4 respectively. It is contended by the learned Counsel for the appellants that A-3 to A-7 have been inside for a period of 1 ½

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months, which fact is admitted by the prosecution. Therefore, while confirming the conviction of A-3 to A-7 under Sec.323 I.P.C., the period already undergone by them, would be suffice, in the opinion of this Court.

13. For the reasons stated above, the judgment of the lower Court finding A-1 and A-2 guilty under Sec.302 of I.P.C. and awarding life imprisonment is set aside, and instead, A-1 and A-2 are convicted under Sec.304(Part II) read with 34 of I.P.C., and they are directed to undergo five years Rigorous Imprisonment for the said offence. Further, the conviction of appellants 1 and 2 under Sec.147 of I.P.C. and the consequent sentence imposed on them are confirmed.

14. So far as the appellants 3 to 7 are concerned, the conviction of the appellants 3 to 7 under Charge No.1 framed under Sec.147 of I.P.C., the conviction of the appellants 3 to 5 under charge No.5 framed under Sec.323 of I.P.C. for causing injuries to P.W.2, the conviction of the appellants 6 and 7 under charge No.7 framed under Sec.323 of I.P.C. for causing injuries to P.W.3, and the conviction of appellants 6 and 7 under charge No.9 framed under Sec.323 of I.P.C. for causing injuries to P.W.4, are confirmed. The consequent sentence imposed on the appellants 3 to 7 under those charges are reduced to the period already undergone by them.

15. So far as the charge No.3 framed against the appellants 3 to 7 under Sec.302 read with 149 of I.P.C., the charge No.4 framed against the appellants 1 to 7 under Sec.323 read with 149 of I.P.C., the charge No.6 framed against the appellants 1, 2, 6 and 7 under Sec.323 read with 149 of I.P.C., the charge No.8 framed against the appellants 1 to 5 under Sec.323 read with 149 of I.P.C. and the charge No.10 framed against the appellants 1 to 5 under Sec.323 read with 149 of I.P.C. are concerned, the judgment of conviction and sentence passed by the trial Court in that regard are set aside, as there was no common object in the instant case, and hence, they are acquitted of those charges.

16. In the result, with the above modification in conviction and sentence, this criminal appeal is disposed of. It is reported that the appellants are on bail. In view of the reduction in sentence, the bail bonds executed by the appellants 3 to 7 shall stand cancelled. As regards the appellants 1 and 2, the Sessions Judge shall take steps to commit them to prison to undergo the remaining period of sentence imposed on them.

Nsv/

Sd/
Asst.Registrar

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Sub Asst.Registrar

To:
1.The Additional Sessions Judge, Chengalpet.
2.The Additional Sessions Judge, Chengalpet,
Through The Principal Sessions Judge, Chengalpet.
3.The District Collector, Chengalpet.
4.The Director General of Police, Chennai.
5.The Public Prosecutor, Madras.
6.The Superintendent, Central Prison, Cuddalore.
7.The Inspector of Police, Pallipattu Police Station,
Kancheepuram District.
8.The Judicial Magistrate No.I, Thiruthani.
9.-do-Thro The Chief Judicial Magistrate, Chengalpattu.
10.The Judicial Magistrate No.I, Villupuram.
11.-do-Thro The Chief Judicial Magistrate, Villupuram.

VC(C.O)
BG/18.08.2005.

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